

REMARKS

This Response is submitted in reply to the Office Action mailed on February 4, 2009. The Commissioner is hereby authorized to charge any fees that may be required or credit any overpayment to Deposit Account No. 02-1818. If such a withdrawal is made, please indicate the Attorney Docket No. 112701-658 on the account statement.

Claims 1-34 are pending in the application. Claims 32-34 were previously withdrawn. In the Office Action, Claims 17, 18 and 24 are rejected under 35 U.S.C. §112 and Claims 1-31 are rejected under 35 U.S.C. §103(a). In response, Applicants have amended Claims 1, 18 and 24 and canceled Claims 2 and 17. The amendments do not add new matter and are supported in Applicants' specification, for example, at page 3, lines 24-28; page 9, lines 1-7; original Claim 2; and Figure 1. In view of the amendments and for at least the reasons provided below, Applicants respectfully request that the rejections to the claims be withdrawn.

In the Office Action, Claims 17, 18 and 24 are rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter that Applicant regards as the invention. Specifically, the Office Action asserts that the term "fat base composition" is unclear as to what it requires. In response, Applicants have canceled Claim 17 and amended Claim 18, formerly dependent from Claim 17, to depend from Claim 1. The Office Action also asserts that the claimed viscosity of Claim 24 is indefinite because viscosity is affected by certain parameters and it is unclear as to what parameters were present to measure the claimed viscosity. In response, Applicants have amended Claim 24 to recite a food product as claimed in claim 1, wherein the viscosity of the liquid center is in the range from 0.01 to 180 Pas between 60° and 100°C. The amendment is supported in Applicants' specification, for example, at page 9, lines 1-7 and Figure 1.

Applicants submit therefore that the present claims meet the definiteness requirements under 35 U.S.C. §112, second paragraph. Accordingly, Applicants respectfully request that the §112 rejection of Claims 17, 18 and 24 be withdrawn.

In the Office Action, Claims 1-31 are rejected under 35 U.S.C. §103(a) as being unpatentable over WO 02/30213 to Jones ("*Jones*") in view of the combination of U.S. Patent No. 6,214,376 to Gennadios ("*Gennadios*") and Lennox (Gelatin Alternatives in Gummi Confections) ("*Lennox*"). Applicants have amended independent Claim 1 to recite a food

product comprising a gelled water-based shell and a liquid center wherein the water-based shell comprises a mixture of kappa carrageenan and iota carrageenan in an amount sufficient to provide a gel texture, the relative proportions of kappa carrageenan and iota carrageenan being 60 to 90% by weight kappa carrageenan and 10 to 40% by weight iota carrageenan based on the sum of the weights of kappa and iota carrageenan, wherein the shell contains, on a dry substance basis, 1.5% to 5% by weight of kappa and iota carrageenans. The amendment is supported in the specification, for example, at page 3, lines 24-28 and original Claim 2. Applicants respectfully submit that the cited references, alone or in combination, are deficient with respect to the amended present claims.

Applicants submit that the cited references fail to disclose or suggest every element of the present claims. *Jones* fails to disclose or suggest a food product comprising a gelled water-based shell and a liquid center wherein the water-based shell contains, on a dry substance basis, 1.5% to 5% by weight of kappa and iota carrageenans as required, in part, by amended independent Claim 1. By contrast, *Jones* discloses the use of carrageenans without disclosing or even suggesting the specific kappa and iota carrageenans of the present claims, not to mention the specific levels of the combined kappa and iota carrageenans or the ratio of kappa carrageenan to iota carrageenan recited in independent Claim 1. In fact, the Office Action admits that *Jones* is silent as to the type of carrageenan used in the shell and to the ratio of kappa and iota carrageenan used in the shell. See, Office Action, page 4, lines 1-2. Applicants respectfully submit that secondary references *Gennadios* and *Lennox* fail to remedy the above deficiencies of *Jones*.

Gennadios also fails to disclose or suggest a water-based shell containing, on a dry substance basis, 1.5% to 5% by weight of kappa and iota carrageenans as required, in part, by amended independent Claim 1. In fact, every one of the 16 compositions disclosed in columns 7 and 8 of *Gennadios* teaches kappa carrageenan levels significantly over the 5% upper level, on a dry substance basis, required by independent Claim 1. For example, Composition 1 teaches a 4% kappa carrageenan level in a composition containing 63.5% deionized water. To calculate kappa carrageenan level on a dry substance basis, water level is not considered. Therefore, Composition 1 teaches, out of the remaining 36.5% non-water components, at least an 11% kappa carrageenan level on a dry substance basis. Using a similar method of calculation, each

Composition clearly teaches kappa carrageenan levels significantly over the claimed 1.5% to 5% level. Moreover, only Composition 12 teaches a combination of kappa and iota carrageenan as required by the claims. However, Composition 12 contains 2% kappa carrageenan, 0.5% iota carrageenan and 94% deionized water. Therefore, on a dry substance basis, Composition 12 has at least 42% kappa and iota carrageenan, clearly over the required levels of independent Claim 1.

Moreover, the range of kappa/iota carrageenan recited in the claims is significant because as the amount of kappa/iota carrageenan is increased, the gel becomes stiffer. However, it is not generally appropriate to include more than 5% kappa/iota carrageenan, on a dry substance basis, as a proportion of the shell solids. See, specification, page 3, lines 24-32. Therefore, besides being deficient with respect to the present claims, *Gennadios* also teaches away from the present claims because each composition taught in *Gennadios* requires kappa/iota carrageenan levels significantly over the 5% threshold recited in independent Claim 1.

Lennox also fails to remedy the deficiencies of *Jones* because *Lennox* fails to teach or suggest a food product comprising a gelled water-based shell and a liquid center wherein the water-based shell contains, on a dry substance basis, 1.5% to 5% by weight of kappa and iota carrageenans as required, in part, by amended independent Claim 1. In fact, *Lennox* does not even teach or suggest a food product comprising a gelled water-based shell and a liquid center. Instead, *Lennox* is directed to gummi confections, which has a homogenous, non-shell structure clearly distinguishable from the shell/center product of the present claims. Moreover, the experimental design, cited as evidence in the Office Action, fails to provide dry basis percentages of kappa and iota carrageenan. Instead, the experimental design lists kappa and iota carrageenan levels on a precooked basis, which includes water and all other water-containing ingredients of the gummi confection. See, *Lennox*, Figures 2 and 3. Therefore, besides not teaching a food product comprising a gelled water-based shell and a liquid center as claimed, the values provided in the experimental design of *Lennox* do not teach or suggest the claimed kappa/iota carrageenan levels of the present claims.

Accordingly, because the cited references, alone or in combination, fail to disclose or suggest every element of the present claims, Applicants respectfully request that the obviousness rejection of Claims 1-31 be withdrawn.

For the foregoing reasons, Applicants respectfully request reconsideration of the above-identified patent application and earnestly solicit an early allowance of same.

Respectfully submitted,

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